

ORIGINAL  
FILE

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Establishment of an Advisory Committee  
to Negotiate Regulations Defining the  
Technical Rules for the Mobile  
Satellite Service in the 1610-1626.5  
and 2483.5-2500 MHz Bands

)  
)  
) CC Docket No. 92-166

RECEIVED

SEP 14 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS

Constellation Communications, Inc. ("Constellation"), by its attorneys, submits these comments in response to the Commission's Public Notice, DA 92-1085, released August 7, 1992, in the matter captioned above. By that notice, the Commission requested comments on its proposal to establish an Advisory Committee to negotiate regulations defining the technical rules appropriate to the provision of mobile satellite services ("MSS") in the 1610-1626.5 MHz and 2483.5-2500 MHz bands pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990, Pub. L. 101-648, November 28, 1990.

Constellation is one of five applicants who filed applications on or before the June 3, 1991 cut-off date for authority to construct and operate a low earth orbit ("LEO") satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands allocated to the radiodetermination satellite service ("RDSS"). These LEO satellite systems will provide voice, data, facsimile

No. of Copies rec'd  
List A B C D E

0 + 2

and position determination services to handheld user terminals, offerings which will not be feasible using geostationary MSS satellites for many years, if ever. Constellation has participated in all of the Commission's proceedings to date in this regard, as well as participating in the United States delegation to the 1992 World Administrative Radio Conference ("WARC") which allocated the RDSS bands to the MSS on a world-wide primary basis. See Notice of Proposed Rulemaking in ET Docket No. 92-28, FCC 92-358, released September 4, 1992. In all of these proceedings, Constellation has consistently advocated the extension of the Commission's competitive, multiple entry RDSS licensing policies to the establishment of LEO satellite systems in the RDSS bands.

**I. Constellation Supports the Use of a Negotiated Rulemaking and Will Actively Participate In Any Such Proceeding**

Constellation supports the Commission's proposal to establish an Advisory Committee and to use the negotiated rulemaking process to bring this proceeding to a prompt and successful conclusion. Constellation agrees with the Commission's analysis that the pending proceeding is a suitable one for negotiated rulemaking, and that it meets all of the selection criteria for using negotiated rulemaking. See Notice at 2. In particular, Constellation believes that the negotiated rulemaking proceeding can be a useful means to resolve many of the technical differences between the applicants in order to

achieve compatible operations of multiple LEO satellite systems in the RDSS bands.

The majority of the pending applicants, including Constellation, have expressed the view that multiple spread spectrum LEO systems can be licensed by a relatively simple extension to LEO systems of the current RDSS licensing rules. This negotiated rulemaking proceeding will allow these parties to develop, and present to the Commission, a common proposal in this regard. Even if any technical issues remain unresolved (e.g. with respect to the operation of non-spread spectrum systems in the RDSS bands), the Commission will benefit from the committee report to the extent that it provides a focussed, detailed technical discussion of any such remaining issues for further Commission consideration.

As recognized by the Commission, see Notice at 3, Constellation is one of the interested parties that will be significantly affected by the MSS service rules because it is one of the pending applicants for a LEO system that will be governed by the rules to be adopted. As noted above, Constellation has been an active participant in all of the previous phases of this proceeding and will actively participate in good faith in the development of MSS service rules in the negotiated rulemaking phase of these proceedings. In this regard, Constellation is still assembling its team to participate in this proceeding. However, Constellation is pleased to inform the Commission that Bruce R. Kraselsky, Ronald J. Lepkowski, Robert A. Mazer and

Albert Shuldiner will represent Constellation in this rulemaking. All of these individuals have actively participated in the preparation and prosecution of the Constellation application to construct and operate its low earth orbit satellite system. Constellation expects that other persons will also participate on its behalf in the work of the committee and any informal groups that may be established. Names of such individuals will be submitted to the Commission shortly.

**II. The Commission Should Limit Participation To  
The Minimum Necessary Parties And Carefully  
Focus The Committee's Work Plan**

In order to maximize the likelihood for a prompt and successful conclusion of this negotiated rulemaking, the Commission should (a) limit participation to the minimum number of parties practical, and (b) precisely define the issues to be addressed by the committee. By carefully organizing the work of the committee at the outset, the Commission can maximize the likelihood of a successful conclusion.

The Commission has identified as interested parties the pending applicants to provide MSS in the RDSS bands (i.e. those companies filing applications on or before the June 3, 1991 cut-off date) and existing users of the RDSS bands. Constellation agrees that, together with the Commission's Domestic Facilities Division, these are the only parties that should be allowed to participate in the negotiated rulemaking. In this regard, the Commission has already identified eight parties, including

Constellation, to participate in the negotiated rulemaking. See Notice at 3. Since all of the pending applicants are already represented in this group, the Commission should reject any application for an additional party to participate in this proceeding unless it represents a bona fide user of the RDSS bands which can not be represented by any parties already identified by the Commission. The Commission should not permit a single class of existing users of the RDSS bands to have multiple representation on the committee. In no event should the Commission allow committee membership to expand beyond the dozen estimated in the Notice since any larger membership is likely to result in numerous diversions from the basic work of the committee.

The Commission can substantially assist in the work of the committee by carefully defining a work plan for the committee that focusses the technical issues on the specific issues to be addressed in the negotiated rulemaking. As the Commission is aware, the pending applications constitute three distinct technical approaches to using the RDSS bands, i.e. multiple spread spectrum LEO systems, a single non-spread spectrum LEO system, and geostationary MSS. Constellation has proposed in its Petition for Rulemaking, File No. RM-7771 (June 3, 1991), to extend the current RDSS licensing rules to accommodate the licensing of multiple LEO systems in the bands. This basic approach is supported by the other spread spectrum applicants, and Constellation expects that a consensus can be reached among

the spread spectrum LEO applicants and existing users of the RDSS bands on the necessary technical rules. In this regard, Constellation believes that the Commission should establish the current RDSS service rules as the basis for licensing LEO systems in the RDSS bands.

To assist the parties in reaching an overall consensus, one useful step would be for the Commission to emphasize that the RDSS bands are the only ones available for immediate implementation of LEO satellite systems, and that geostationary satellite systems will not be licensed by the Commission unless they are fully compatible with LEO systems. The 1545-1559 MHz and 1646.5-1660.5 MHz bands have already been assigned to a single licensee, the American Mobile Satellite Corporation (AMSC), and additional spectrum is currently being sought by AMSC in the 1530-1544 MHz and 1626.5-1645.5 MHz bands. See Notice of Proposed Rulemaking in General Docket 90-56, FCC 90-63, released March 5, 1990. The Commission should not allow the limited time of the committee to be wasted by trying to accommodate AMSC's geostationary system architecture in the RDSS bands when it already has so much other spectrum available to it on an exclusive basis within the United States.

The Commission should also clearly state that its policy objective is to accommodate multiple LEO systems in the RDSS bands, and that applicants may be required to modify the technical characteristics of their systems if necessary to achieve this policy objective. (See Second Report and Order in

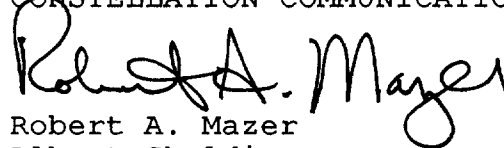
General Docket Nos. 84-689 and 84-690). Constellation expects that the negotiated rulemaking procedure will allow the spread spectrum applicants to resolve any outstanding technical questions that might remain concerning the compatibility of spread spectrum LEO systems among themselves and between LEO systems and other users of the spectrum. Thus, the burden should be placed on non-spread spectrum systems to demonstrate how multiple entry is possible with such systems, and how such LEO systems would share with existing users of the bands. The Commission should indicate from the outset that it will not mandate the splitting of the RDSS bands into two segments, one for the exclusive use of one applicant and the other to be shared by all of the other spread spectrum applicants, simply to accommodate a single non-spread spectrum system when all of the pending systems could be accommodated with spread spectrum techniques.

**CONCLUSION**

Constellation supports the use of a negotiated rulemaking procedure to establish technical rules to govern the licensing of its proposed LEO satellite system in the RDSS bands, and will actively participate in the proposed committee to seek a prompt and successful resolution of this proceeding.

Respectfully submitted,

CONSTELLATION COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Robert A. Mazer". The signature is fluid and cursive, with the first name "Robert" and last name "Mazer" being clearly legible.

Robert A. Mazer  
Albert Shuldiner

NIXON, HARGRAVE, DEVANS & DOYLE  
Suite 800, One Thomas Circle  
Washington, D.C. 20005  
(202)-457-5300

September 14, 1992

Its Attorneys



CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that the copies of the foregoing Comments were served by first-class mail, postage prepaid, this 14th day of September 1992, on the following persons:

- \* Chairman Alfred C. Sikes  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner James H. Quello  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Sherrie P. Marshall  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Andrew C. Barrett  
Federal Communications Commission  
Room 844  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Commissioner Ervin S. Duggan  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Thomas P. Stanley  
Chief Engineer  
Federal Communications Commission  
Room 7002  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* Ray LaForge  
Federal Communications Commission  
Room 7334  
2025 M Street, N.W.  
Washington, D.C. 20554

- \* Cheryl A. Tritt  
Chief, Common Carrier Bureau  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, D.C. 20554
- \* Wendall R. Harris  
Assistant Bureau Chief  
Federal Communications Commission  
Room 6010  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* Cecily C. Holiday  
Chief, Satellite Radio Branch  
Federal Communications Commission  
Room 6324  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* James R. Keegan  
Chief, Domestic Facilities Division  
Federal Communications Commission  
Room 6010  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* Thomas Tycz  
Deputy Chief  
Domestic Facilities Division  
Federal Communications Commission  
Room 6010  
2025 M Street, N.W.  
Washington, D.C. 20554
- \* Fern J. Jarmulnek  
Satellite Radio Branch  
Federal Communications Commission  
Room 6324  
2025 M Street, N.W.  
Washington, D.C. 20554
- Bruce D. Jacobs  
Glenn S. Richards  
Fisher, Wayland, Cooper & Leader  
1255 23rd Street  
Suite 800  
Washington, D.C. 20037

Philip L. Malet  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Lon C. Levin  
Vice President and Regulatory Counsel  
American Mobile Satellite Corp.  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Dr. Robert L. Riemer  
Committee on Radio Frequencies  
HA-562  
National Research Council  
2101 Constitution Avenue, N.W.  
Washington, D.C. 20418

Norman R. Leventhal  
Raul R. Rodriguez  
Stephen D. Baruch  
Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006-1809

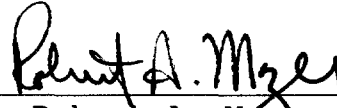
Jill Abeshouse Stern  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Second Floor  
Washington, D.C. 20036

Leslie Taylor  
Leslie Taylor Associates  
6800 Carlynn Court  
Bethesda, MD 20817-4302

John L. Bartlett  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Linda K. Smith, Esq.  
Robert Halperin, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2505

Victor J. Toth, P.C.  
Law Offices  
2719 Soapstone Drive  
Reston, VA 22091

  
\_\_\_\_\_  
Robert A. Mazer

\* By Hand